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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF INDIANA BELL TELEPHONE COMPANY, INCORPORATED D/B/A AMERITECH INDIANA PURSUANT TO I.C. 8-1-2-61 FOR A THREE PHASE PROCESS FOR COMMISSION PREVIEW OF VARIOUS SUBMISSION OF AMERITECH INDIANA TO SHOW COMPLIANCE WITH SECTION 271(C) OF THE TELECOMMUNICATIONS ACT OF 1996)

CAUSE NO. 41657

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR'S REPLY COMMENTS ON PROPOSED REMEDY PLANS

Three proposed performance appraisal or remedy plans were filed in this Cause - one by Ameritech Indiana ("Ameritech"); one by Z-Tel Communications, Inc. ("Z-Tel"); and one by a group of Indiana competitive local exchange carriers ("CLECs"), including AT&T, TCG Indianapolis (an AT&T affiliate), MCI WorldCom, McLeod USA, and Time Warner. Each of the above parties stated or inferred that their individual remedy plans met all 44 principles established by the Commission in its November 9, 2000 Docket Entry. On March 8, 2001 the above filing parties also submitted initial comments on the proposed remedy plans.

These Reply Comments submitted by the Indiana Office of Utility Consumer Counselor ("OUCC") are offered as general comments on the above filings and the underlying public policy interests - not as an expert statistical analysis of the three proposed remedy plans.

A. General Considerations

1. It is apparent that knowledgeable statisticians participated in the development of each of the proposed remedy plans. As a result, the parties' critiques of the three plans appear to be stated and supported in a professional manner. Rather than identify a single, valid plan, the Indiana Utility Regulatory Commission ("IURC" or "Commission") will need to compare the strengths and weaknesses, the advantages and disadvantages of each proposal and then select the one that best serves the public interest for the State of Indiana, with or without changes or additions made by the Commission.

2. A number of petitions for inter-LATA toll authority have been processed in various states over the last several years. Over time, improvements have been made to the original performance measures, testing procedures, and related matters. Ameritech states that its proposed remedy plan is nearly the same as the plan originally approved more than a year ago for SBC in Texas and subsequently approved without significant changes or additions in Kansas and Oklahoma. The OUCC believes that this Commission should attempt to identify any subsequent, significant improvements to the SBC-drafted remedy plan that was approved for the State of Texas some time ago. The OUCC does not mean to suggest that the Ameritech plan should be rejected without further analysis. However, subsequent collaborative processes conducted in this and other states have resulted in numerous improvements to SBC's original performance measures (PMs) and master test plan (MTP) proposal from Capital Section 271 proceedings for the State of Texas, as well as to the actual operating support systems ("OSS") being used by Ameritech

in Indiana at this time. Given those interim improvements to MTPs, PMs and Ameritech's OSS, it would not be surprising for this Commission to find that the original SBC-drafted remedy plan for the State of Texas is no longer the best available option.

3. The OUCC recommends that the IURC give serious consideration to the CLEC Joint Remedy Plan. Indiana CLECs have the most at stake in this OSS proceeding and in this specific debate. CLECs that interconnect with Ameritech are dependent on the adequacy and reliability of the services and network elements they purchase from Ameritech. Without adequate and reliable UNE services, a CLEC could not compete with Ameritech as a facilities-based local exchange service provider in the State of Indiana. If there is noncompliance with performance objectives and/or discrimination in the provision of services and network elements to the CLECs by Ameritech, a CLEC's business will fail, regardless of whether Ameritech UNE service problems were intentional or accidental.

The joint CLEC proposal is, no doubt, shaped by the CLECs' understandable concern that Ameritech's instinctive cost-minimization and business retention goals could result in less than optimal performance in Ameritech's provision of UNE services to its wholly-dependent wholesale customers, who also happen to be Ameritech's direct competitors.

The OUCC does not intend to suggest that Ameritech will fail to make good faith efforts to eliminate market entry barriers for interconnecting CLECs or that Ameritech won't have a strong incentive to meet Section 271 requirements in order to obtain permission from the FCC to enter the interLATA long distance market in Indiana. However, fair and meaningful incentives will help local service competition develop in Indiana – a result that should ultimately benefit consumers by improving service quality, increasing service options, and reducing rates.

CLECs that question the efficacy of Indiana's OSS enforcement mechanisms will be less likely to enter and less likely to vigorously compete in Indiana's competitive local exchange market. Given that all but one of the CLECs actively participating in this proceeding support the joint CLEC proposal, the OUCC believes that the public interest would best be served by adopting the CLECs' Joint Remedy Plan, unless or until another approach (such as the Z-Tel proposal) is proven to be more effective, thereby gaining support from the majority of Indiana's facilities-based CLECs that interconnect with Ameritech.

B. Ameritech's Proposed Remedy Plan

Ameritech argues that its proposed remedy plan is the only one designed to assess remedies only if poor performance has actually occurred. Ameritech criticizes the joint CLEC and Z-Tel proposals as being designed to make Ameritech pay penalties even when OSS service quality is not a problem. The dollar amount of remedies available under the Ameritech remedy plan is designed to increase with the importance of the applicable performance measure and with the number of aggrieved customers. In contrast, Ameritech also argues that the CLEC and Z-Tel plans use arbitrary multipliers that compound the unjustified harm inflicted on Ameritech under the CLECs' proposed remedy plan. Ameritech maintains that its plan has been tested and approved by the FCC and by other state commissions in Texas, Kansas and Oklahoma, and that its plan is already working properly in Indiana and throughout the SBC/Ameritech operating regions, as required under the FCC merger order. Ameritech attacks the proposed CLEC remedy plan as not having any proven track record in this or any other state. Ameritech also argues that its own plan should be adopted, since it uses a nondiscriminatory "parity" standard for wholesale performance whenever a retail analog exists. Ameritech therefore maintains that its plan is consistent with anti-discrimination requirements in the Telecommunications Act of 1996 ("TA-96"), while opposing the CLEC proposal as one that would unfairly impose an absolute benchmark or "floor" on wholesale performance, regardless of whether there was parity between Ameritech's wholesale and retail test results.

Ameritech's plan applies a standard z-test or a modified z-test developed by the Local Competition User's Group for sample sizes of 30 or more, coupled with a permutation test for sample sizes under 30. Ameritech maintains that the statistical tests in its plan are designed to achieve a 95% confidence level. Ameritech's proposed remedy plan may not be patently flawed; however, the OUCC believes that this Commission should determine whether Ameritech's plan will instill sufficient confidence in CLECs to encourage additional competitive market entry in Indiana.

C. The CLEC Joint Remedy Plan

The OUCC substantially agrees with the following statement in the Introduction Section on Page 1 of the Joint Comments of the Indiana CLECs:

> An effective remedy plan, with immediate financial consequences for non-compliance, is essential to incent SBC/Ameritech Indiana to meet its regulatory obligations to provide nondiscriminatory access to services and facilities, and to ensure the development of competition in Indiana's telecommunications markets.

The OUCC believes that the CLEC plan will meet that objective and recommends that the IURC adopt the joint CLEC proposal for the State of Indiana, at least on an interim basis.

Page 2 of the Joint Comments outlines 10 aspects of the CLECs' proposed remedy plan. The "Parity with a Floor" provision will be discussed later in these Reply Comments. The Joint CLEC approach uses a statistical methodology to declare parity/disparity, which is based on the modified z statistic and Type I /Type II error balancing critical values. The Joint CLEC comments point out that it is important to use appropriate statistical procedures, since the performance results for many of the measures may exhibit unavoidable random variation. The CLECs recommend that this Commission adopt 0.25 as the parameter delta value related to balancing to account for possible Type I and Type II errors.

The Joint CLEC Remedy Plan also provides both an evaluation of the support delivered to individual CLECs and to Indiana's CLEC industry as a whole. In providing remedies, the CLEC approach escalates payments based upon the duration and extent of harm resulting from Ameritech's failure to meet applicable performance measurement requirements. Unlike the SBC Texas Plan (which the Ameritech Plan was patterned after), the Joint CLEC Plan does not include absolute caps on penalties for non-compliance; however, the CLEC plan contemplates conducting a regulatory hearing if a certain level of remedy payments is exceeded. (Page 12, Joint Comments of the Indiana CLECs.)

The CLEC plan recommends that benchmark performance standards be used when parity comparisons are not available. The CLEC plan also provides that Ameritech's failure to meet performance measurement benchmarks that are set at the IURC's minimum service standard levels not be made subject to statistical testing. The Joint CLECs argue that "Parity with a Floor" is necessary, since Ameritech Indiana has provided poor service quality to both wholesale and retail customers during recent years – service that fell below state minimum telephone service quality requirements. "Parity with a Floor" means that Ameritech should provide wholesale service to CLECs at a quality level no worse than the level at which it provides the same services to its own retail customers. However, it also means that Ameritech must meet the IURC's minimum service quality requirements for all of its customers - including both retail and wholesale customers.

The Joint CLECs criticize Ameritech's Proposed Plan as providing an absolute cap on remedy payments or penalties, which Ameritech argues is not a problem, since the FCC could always withdraw Ameritech's Section 271 interLATA toll authority if CLECs require further protection. Like the joint CLECs, the OUCC believes that it would take an extreme situation for the FCC to withdraw interLATA toll authority from Ameritech, once that authority is granted. Even if Ameritech's interLATA toll authority were withdrawn, the withdrawal process would take a fair amount of time, leaving aggrieved CLECs virtually unprotected during that time, without any immediate remedy.

Ameritech criticizes the Joint CLEC Plan as having an error rate of up to 40%. (Page 7, Ameritech Comments.) Ameritech claims that the CLECs' proposed methodology is inappropriate for small sample sizes. (Page 12, Ameritech Comments.) Ameritech also maintains that its proposed plan is more accurate than the CLEC plan, since it uses permutation testing for smaller samples (under 30 transactions). (Page 15, Ameritech

Comments.) The IURC should consider whether the CLEC proposal could be improved in that respect.

In conclusion, the OUCC believes the CLEC Joint Remedy Plan should be used here in Indiana, at least on an interim basis, since CLEC concerns regarding Ameritech's OSS performance are paramount to the development of facilities-based competition in Indiana. Ameritech's retail service quality has fluctuated significantly in recent years. It is reasonable to assume that wholesale service quality levels have followed the same pattern, justifying the CLECs' position that Ameritech's proposed remedy plan will not sufficiently protect CLECs' investment in Indiana's developing competitive facilities-based local exchange telecommunications market.

D. Z-Tel's Proposed Remedy Plan

Z-Tel's Zone Parity Proposal is a non-statistical approach to calculating remedy payments resulting from an ILEC's failure to provide adequate wholesale service. It is designed to work with the performance measurements and standards already accepted by the IURC. The Zone Parity benchmarks encourage ILECs to provide service that is just, reasonable, and nondiscriminatory and does so through the use of quality of service standards that are both within the capabilities of the ILEC and of sufficient quality to facilitate the evolution of competition in local telecommunications markets. These service standards, based in many cases on observed ILEC performance, provide CLECs with fixed expectations as to what level of service they should receive from the ILEC and provide the ILEC with certainty as to the level of service required to avoid penalties. Z-Tel claims that its non-statistical approach greatly simplifies the interpretation of actual performance measurements. While no statistical testing is done, Zone Parity does consider both the mean and distribution of the performance data. This makes Zone Parity an outcome-based approach to performance measurement. In other words, actual failure to meet a specified quality standard is always interpreted as a failure. Because it is an actual outcome-based approach, Zone Parity requires no adjustment for Type I or Type II errors. To further justify its proposal, Z-Tel states that statistical procedures, while routine and comprehensible to statisticians, are inordinately complex for the statistical layperson and should therefore be avoided.

The Zone Parity benchmarks, because they are based on actual performance data, consider both the relative and absolute quality dimensions of performance. For a given set of performance data the individual observations of the service provision can be grouped into various categories along with a quality scale. Within the context of Zone Parity, these groupings are called Zones and each Zone has a Zone Parity benchmark that establishes the number or percentage of CLEC observations in each Zone that is consistent with good service (the Z-Tel Plan uses three zones). Z-Tel says that consistency with the interpretations of benchmarks and the desire to avoid monthly statistical tests requires that "slack" be added to the Zone Parity benchmarks. Z-Tel proposes a 10% "slack" factor, which is added to the observed percentages in each Zone. Then additional slack is incorporated into the Zone Parity benchmark by adopting a "greatest integer" approach when calculating the number of benchmark observations. However, Z-Tel's selection of factor values has not been adequately documented or explained. Moreover, because the output of Zone Parity is count data, a number of penalty structures are possible in the Z-Tel Plan including both per-occurrence and per-measure penalties. Severity and duration of non-compliance can also be factored into the penalty structure.

Ameritech claims that Z-Tel's proposed remedy Plan is not acceptable, since it is a non-statistical approach. Ameritech's position is that "[s]tatistical analysis is the accepted method to understand and account for random variations that occur in the real world, and thus to reduce the risk of unfair payments." (Page 9, Ameritech Comments.) Ameritech states that Z-Tel "acknowledges the problem of random variation, but its proposed solution does not really address the problem at all." (Page 16, Ameritech Comments.) Ameritech also maintains that "[t]here is no basis for Z-Tel's assumptions that performance data will fit prescribed zones." (Page 17, Ameritech Comments.) Ameritech estimates that Z-Tel's plan would yield a Type I error rate greater than 25%. In other words, even if Ameritech did not discriminate against Z-Tel, Z-Tel's proposed remedy plan would impose remedies on 25% or more of the performance measures." (Page 19, Ameritech Comments.) Ameritech also criticizes Z-Tel for comparing Ameritech's current wholesale performance to its retail performance for some unspecified, past period of time. (Page 19, Ameritech Comments.) Finally, Ameritech points out that the Z-Tel Plan has not been submitted in any of the other Ameritech-SBC states. (Page 27, Ameritech Comments.)

In conclusion, the OUCC believes the Z-Tel Zone Parity Proposal lacks sufficient CLEC support to justify its current adoption in the State of Indiana. While some aspects of the Z-Tel plan are intriguing, it would be premature to adopt the plan for permanent use in Indiana at this time. <u>The OUCC therefore recommends that the Commission adopt the</u>

Joint CLEC Proposed Remedy Plan, at least on an interim basis, unless or until another approach is proven to be more effective and gains the support of the majority of Indiana's facilities-based CLECs that interconnect with Ameritech.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing **Indiana Office of Utility Consumer Counselor's Reply Comments on Proposed Remedy Plans** has been served on all parties to this proceeding by electronic delivery on April 9, 2001, In accordance with the electronic services proceeding established by the Commission for used in this Cause No. 41657.

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